



## ARTICLE

# The Norwegian Political Discourse on Prohibiting Muslim Garments. An Analysis of Four Cases in the Period 2008–2018

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### ABSTRACT

The public and political debate about Islam and Muslims in Norway have revolved around issues like topics of integration and “radicalisation” and the compatibility of Islam with democracy and “Western values”. Clothing related to Muslims – i.e. Muslim women – such as *hijab*, *niqab*, and *burqa* are in the public and political debate often referred to as examples that Islam is not compatible with “Norwegian” (or “Western”) values. Several political initiatives in order to ban Muslim garments in public places or in school has been rejected with reference to the Norwegian state’s obligations to Human Rights. This article will illustrate how the political debate about Muslim garments have evolved in the period from 2008 to 2018. Four cases will be presented to illustrate this development, and show how each case have been evaluated by the Ministry of Justice in order to decide whether or not the propositions could be a violation of the Norwegian state’s obligation to Human Rights. The fourth case will illustrate how secular arguments, and the strategic understanding of *niqab* and *burqa* as “neutrally designed”, paved the way for a national regulation and a ban on clothing covering the face in educational settings.

### KEYWORDS

Islam, Muslims, Human Rights, Norway, secularization

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## Introduction

As in most European countries, Islam has become a visible but also a highly contested and debated religion in Norwegian society. This article's aim and scope is to illustrate how public debate has influenced decisions and political propositions in the Norwegian parliament concerning garments like the *hijab*, *niqab*, and *burqa* in the period from 2010 to 2018. The article will illustrate the constant political negotiation – or ambivalence – on how to deal with clothing related to Muslims. One continuing point of reference in the political debate is the Norwegian state's obligations concerning basic human rights. Several propositions about prohibiting “Muslim garments” (*hijab*, *burqa*, and *niqab*) have been rejected in deference to human rights. However, in 2018, parliament sanctioned a general ban on clothing that covers the face in educational settings (kindergarten, primary to upper-secondary schools, university colleges and universities) ending what seems to have been a process, for over a decade, of finding a way to formulate a law that is not a violation of the Norwegian state's obligation concerning human rights.

## Norway – a Christian State, a Secularized Society?

The first Norwegian constitution was written in 1814. This was an important first step towards becoming an independent nation in 1905, when the union with Sweden was dissolved. In its original form, the constitution stated that all citizens were bound to follow the Lutheran confession in all their actions, and that the inhabitants had to belong to the Lutheran faith. The so-called dissenter movement opposed the exclusiveness of the Evangelical-Lutheran religion and fought for extended justice for minority groups. In 1845, parliament passed an act allowing “dissenters” (Christian groups that did not belong to the Evangelical-Lutheran state church) to practise their faith; this also included Jews (Oftestad, 1998, p. 117). Since the revision in 1845 allowed dissenters to practise their religion, it also allowed parents who did not belong to the Lutheran state church to have their children exempted from Lutheran catechismal instruction in school. The Education Acts of 1889 and 1936 confirmed this right.

As late as 1964, a revision of the constitution, which allowed for the free exercise of religion, was added, and § 2 now reads:

All inhabitants of the Realm shall have the right to the free exercise of their religion. The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same manner.

This applied until 2012, when changes concerning religion were made in the constitution, following a process of disentangling the Evangelical-Lutheran state church from the nation state. Adjustments were made in the constitution's paragraphs concerning religion. Chapter A, article 2, now reads:

Our values will remain our Christian and humanist heritage. This Constitution shall ensure democracy, a state based on the rule of law and human rights (The Constitution of the Kingdom of Norway, 1814).

Chapter B, article 16, now reads:

All inhabitants of the realm shall have the right to free exercise of their religion. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be supported by the State. Detailed provisions as to its system will be laid down by law. All religious and belief communities should be supported on equal terms rights (The Constitution of the Kingdom of Norway, 1814).

Even after the adjustments to the constitution in 2012, there remains a special focus on Lutheranism, and there is no legally defined relationship between Islam and the state. However, from the vantage point of religious minorities, such as Muslims, the focus on human rights and the legal requirement that all “religious communities should be supported on equal terms”, are important. This means, among other things, that formally approved and registered religious and secular humanist groups receive economic support from the state. This arrangement has been applied since 1969<sup>1</sup>.

The explicit reference to the Evangelical-Lutheran religion can be said to be a particular emphasis on Christian values and thus form a particulate value basis for the state (Lindholm, 2006, p. 194). Therefore, in the question concerning whether the State of Norway, with reference to the Constitution, can be regarded as secular, one can hardly answer a simple yes. If one looks at established researchers’ definitions and understandings of what a secular state is, such as Donald Eugene Smith’s classic definition of a secular state, the Norwegian constitution must be regarded as Christian:

The secular state is a state which guarantees individual and corporative freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion (Smith, 1963, p. 4).

However, there is no single generally accepted standard definition of what a secular state is, as Smith’s working definition offers. Nevertheless, the description of a secular state is generally used when referring to a state’s constitution, without any special emphasis on specific religious values (Juergensmeyer, 2008). If a state is to be understood as secular, religion must be understood separately from the value of being anchored in the state’s constitution, although in practice there will be a constant negotiation between religion(s) and state(s) with regard to values. By being explicitly rooted in religious values, and in reference to Smith’s definition, it is clear that Norway

<sup>1</sup> The amount of financial support varies. In 2017, religious groups were supported to the tune of about 55€ for each member (Jacobsen, 2018, p. 15).

cannot be understood as a secular state, even though the constitution also stipulates religious freedom as a principle.

The Norwegian state has strived to be a national state that values basic human rights. In 1994, a “human rights law” (Norwegian, *Lov om styrking av menneskerettighetenes stilling i norsk rett*) was introduced (The Constitution of the Kingdom of Norway, 1999). This started a process of a formal implementation of international conventions on human rights as a part of the Norwegian constitution. In order to be in accordance with international conventions, the law has been adjusted several times, in 1999, 2003, 2005 and 2010. In cases where there is conflict between national law and international conventions implemented in the “human rights law”, the latter should be preferred.

Despite the explicit reference to Evangelical-Lutheran religion in the constitution, Norwegian scholars, Knut Lundby and Pål Repstad (2018, p. 13), have argued that Norwegian society, as the rest of Scandinavia, can be described as having a dominating “self-understanding of liberal open-mindedness, and secularity is often taken for granted.” A part of this is that equality between the sexes is a core value, and that conflicts are usually handled in negotiations within a neo-corporatist system, between the state and collective institutions, or in open public debate (Lundby & Repstad, 2018). Thus, a nuanced description of Norway might argue that, although the constitution is based on Evangelical-Lutheran Christianity, the society appears secularized.

Even if one agrees with Lundby and Repstad’s description, it is obvious that Christianity still serves as an important reference in different parts of society that are regulated by law. This becomes evident in public and political debates about what one should accept or decline, especially when it comes to religions that are not considered Norwegian/Christian. In school law and curricula, Christianity is still highlighted as the religious tradition that has influenced Norwegian society and today is a part of “our” cultural heritage. However, the latest school reform has diluted it somewhat.

In the early 1990s, Minister Gudmund Hernes, the Minister for Church, Education and Research, representing the Labour Party, prepared a new Education Act. An important part of this work was to include all levels of public school in a legally binding document, and, in 1993, Minister Hernes presented a completely new core curriculum, which applied to primary, secondary, upper secondary and adult education. The core curriculum was a general national guideline, describing in depth values for the school system formulated in the Education Act.

Perspectives in the 1993 core curriculum were linked to a renewed interest in the family, internationalization, the explosion of mass media, and an emphasis on multiculturalism. Religion, and especially Christianity, was given an important place in the core curriculum in the first chapter, entitled the “Spiritual human being”. The first sentence states that education shall be based on fundamental Christian and humanistic values. It should uphold and renew our cultural heritage to provide perspective and guidance for the future (The Royal Ministry of Education, Research and Church Affairs, 1993, p. 7).

Christianity is further elaborated as “a deep current” within Norway’s (our) history:

The Christian faith and tradition constitute a deep current in our history – a tradition that unites us as a people across religious persuasions. It has imprinted itself on the norms, world view, concepts and art of the people. It bonds us to other peoples in the rhythm of the week and in common holidays, but is also an abiding presence in our own national traits: in architecture and music, in style and conventions, in ideas, idioms and identity.

Our Christian and humanistic tradition places equality, human rights and rationality at the fore. Social progress is sought in reason and enlightenment, and in man's ability to create, appreciate and communicate.

Together, this interwoven tradition provides us with unwithering values both to orient our conduct and to organize our communities. They inspire selfless and creative efforts, and encourage honourable and courteous behaviour (The Royal Ministry of Education, Research and Church Affairs, 1993, p. 7).

In other words, by forming society's norms, world view, concepts and the art of the people, Christianity forms the common and normal state of society and even unites people across religious persuasions. "We", the Norwegians, are united on the basis of Christianity, and references to "our history" and "our Christian and humanistic traditions" are applied as if all citizens share a common history. Christianity is communicated as a common national narrative, serving as a starting point or the main perspective for teaching in public schools (cf. Andreassen, 2014).

In addition, Christianity is related to humanism, to the modern nation-state and democracy, and to our cultural heritage. Christianity is solely understood through content and values other than strictly religious content. Christianity is a culture and it is part of the nature of this culture to understand "others", in order to better foster tolerance which unites "us" (the Norwegians) with other cultures, and it also even unites us with other religions.

The core curriculum applied in the period from 1993 to 2017. In 2017, a new core curriculum was introduced. The role of Christianity in Norwegian society was somewhat toned down, and the reference to humanism was highlighted: "The core values are based on Christian and humanist heritage and traditions" (The Norwegian Directorate for Education and Training, 2017, p. 3). The core curriculum also placed more emphasis on basic human rights. A part of that is to work with the Norwegian state's commitment towards indigenous people (in Norway, the Sami) and national minorities (the Forest Finns, Jews, Kvens/Norwegian Finns, Roma (Gypsies) and Romani people/Tater), and their right to exercise their culture, language and religion. The Norwegian state has ratified international conventions, securing the rights of indigenous people and national minorities. This is also a part of the "human rights law".

The point of referring to the constitution and school curricula is to provide an example of how Christian values are preserved and continued in different parts of the Norwegian legal system, together with human rights. Legal documents and formal practice constantly have to create a balance between the emphasis on Christianity as "cultural heritage" and human rights (freedom of religion, or indigenous or national minorities' rights). If one isolates the formal documents, it is a paradox that Norwegian

society is described as secularized. Perhaps it captures the fact that people inhabiting the Norwegian realm do not think much about religion (Christianity) and, in the legal system, there is the possibility of being indifferent, as long as people are not faced with “other” religions, which appear strange or even provocative, demanding religious freedom. Statements demanding religious freedom bear the risk of being characterized as radical or extreme.

## Muslims in Norway

As a growing religious minority in Norwegian society since the 1960s and 1970s, a general estimate is that there are about 200,000–230,000 Muslims in Norway, which is about 4–5% of the total population (see also Bøe (2018) and Bangstad (2018) for estimates). According to official statistics, there were 166,861 registered members of different Muslim religious groups in 2018 (Statistics Norway, 2019). The Muslim groups comprised 156 organizations with names referring to Islam. These include the Ahmadiyya, as well as Sunni and Shia groups. The number of Muslim organizations illustrates researchers’ comments about the Norwegian Islamic landscape being rather fractured and polarized (cf. Bangstad, 2018, p. 497). As a religious minority, Muslims do not have any specific rights such as those of Jews, who are formally recognized as a national minority. This is to do with the criteria for national minorities in international conventions.

Like any religion, Islam is diverse. Muslims vary, and answers to the question “What is Islam?” – no matter to which source it is directed (texts, classical/canonical or others, to learned or unlearned Muslims, men or women, devout or non-devout) – will probably range on a wide scale. Islam in Norway and Europe in general, including what has been called “Euro-Islam”, is no exception to this. Even within discernible institutionalized “Islams” in the EU, Islam comes in many more than one shape. Muslims in the EU and the European nation states come with various languages, educational, political, ideological, socio-economical and religio-theological backgrounds, agendas and aspirations. Some are Sunnis, some Shi’ites, some Alawi. Some are Salafi, others Wahabi, others again may be Salafi-Sufi. Some are well integrated, others are not.

The pluralism within Islam in the EU also has to do with the fact that the presence of Muslims and their communities has different histories in the different countries<sup>2</sup>. In some EU countries, it goes way back in time, in others it is relatively recent, and, in Norway for example, Islam is made up of Muslims of different nationalities than those in, for example, France, Holland and England. Furthermore, the various Muslim groups, societies and/or institutions exist within different legal frameworks and must adjust to differing regulations for the majority as well as minority religions and differing laws and policies regarding integration. In addition, a rather complex matter is whether one is dealing with institutionalized or less institutionalized forms of Islam. The number

<sup>2</sup> In the presentation of the European context, I have to some extent relied on Tim Jensen’s (2007b) introduction on Islam in Denmark. Both Denmark and Norway are a part of the same European context, and similar tendencies can be detected in each country. This especially concerns the discourse on clothing (*hijab*, *niqab*, and *burqa*) and the integration of Muslims in Norwegian society.

of Muslim organizations is one thing, but there is probably is a large number of silent, unorganized, and maybe less practising, Muslims, who do not belong to an organized group and thus do not have or want to have a “spokesman”. One might thus assume that this group of Muslims does not want to be categorized or represented primarily as “Muslims” but, instead, address themselves through ethnicity or other categories.

Stressing that Islam is not a monolith is of course a sort of banality that can be said concerning any religious tradition. However, the need to stress the existence of many Islams and Muslims is even more acute, due to the sweeping generalizations and gross stereotypes central to the Islamophobic debates: debates that go back long before 9/11, and debates that may have far-reaching consequences (e.g. Jensen, 2003). It may be argued that continuously representing and discriminating against Muslims – as “foreigners”, “newcomers”, fifth-columnists and potential terrorists, a threat to political, military and social security, and as a potential threat to “Norwegian or European values”, democracy and human rights – may be highly counterproductive to integration and security. Islamophobic discourses, often buying into the very interpretations of Islam propagated by (militant) Islamists, arguably may play a role in the making of militant, anti-Western Muslim fanatics.

Consequently, general academic efforts to describe and analyse diversities and pluralism within a religion tend to become more than an academic virtue when it comes to Islam (Jensen, 2007a). The politicization of Islam in Europe and elsewhere is, of course, associated with instances of political Islams, outside and inside Europe. It is, however, also a consequence of the extreme degree to which Islam, for a variety of reasons, has become the most disputed issue in public and political debates in many countries. This debate is, of course, largely triggered by incidents such as 9/11 and the bombings in Madrid (in 2004), and London (in 2005), and the terror attack on Charlie Hebdo in Paris in 2015. Aspects of academic research and representations of Islam no doubt have been influenced by this in different ways (Hughes, 2012; Rennie & Tite, 2008). The politicization of religion in general, and of Islam in particular, leads to a kind of politicization of the academic study. As a result, the role of the religious scholar in public debate has become a crucial question within the academic study of religions (e.g. Jensen, 2007b/2008; McCutcheon, 2001).

Any survey on Islam must include a discussion about the debates or discourses on Islam. Some debates, current stereotypes, and uses of Islam and “the Muslim” as the significant Other are comparable and similar, if not identical, to what has been found since the beginnings of Islam. It may be hard to document and explain in detail transmissions of stereotypes. Nevertheless, it may be contended that the long history of the use of Islam as the significant Other has provided Europeans with a vast number of images and stereotypes. Analysis of media and popular culture discourses, such as films, has displayed how these media provide stereotypes and set the agenda for public debate and opinion on Islam and Muslims. More than ten years ago, the report, *Images of Islam in the UK* (Moore, Mason & Lewis, 2008), documented stereotypical representations of Islam and Muslims in British newspapers in the period from 2000 to 2008. The coverage of Islam and Muslims in Britain was documented to be rather extensive. An analysis of 974 newspaper articles about British Muslims in the British

press documented how language used to describe Muslims was related to negative or problematic issues. Nouns used in relation to British Muslims were “terrorist”, “extremist”, “Islamist”, “suicide bomber” and “militant”. The most commonly used adjectives were “radical”, “fanatical”, “fundamentalist”, “extremist” and “militant”. References to radical Muslims outnumbered those to moderate Muslims by seventeen to one (Moore, Mason & Lewis, 2008, p. 3). Overall, 26% of the stories presented in the British media analysed Islam as dangerous, backward or irrational.

Research from other European countries coincides with this picture (Sharbrodt, 2017). In Norway, a report from The Directorate of Integration and Diversity (IMDi, 2010) documented similar tendencies. The public debate concerning Muslims or Islam in Norway has been characterized by stereotypical ideas. Islam and Muslims have come to represent something new, strange and even a threat to Norwegian society and Norwegian and Christian values. Discussions like these prove that a more visible Muslim presence in society over recent decades has resulted in public tensions over radical Islamism, (Muslim) immigration and globalization, which have triggered new right-wing populism (cf. Døving, 2012). In 2017, a report on attitudes towards Jews and Muslims in Norway (Hoffmann & Moe, 2017, p. 11) showed that negative attitudes towards Muslims are rather common. This periodically results in a difficult cultural climate for Muslims. In general, the Norwegian public debate about Islam has revolved around issues like integration and “radicalization” and the compatibility of Islam with democracy and “Western values” (Bangstad & Elgvin, 2016, p. 515). In the public debate, clothing such as the *hijab*, *niqab*, and *burqa* are often referred to as examples of Islam not being compatible with “Norwegian” (or “Western”) values (Døving, 2012).

In the last two decades, Islam has become a central topic in Norwegian politics, which it never was before. A recurring discussion has involved questions concerning clothing. I will illustrate this tendency, by drawing attention to four cases of political debate concerning Muslim garments.

### Case 1: *Hijab* in the Police

In 2008, a 23-year-old woman sent a letter to the Directorate of Police, asking if she could wear the *hijab* with police uniform. The woman, an immigrant from Algeria arriving Norway in 2000, had, according to newspaper coverage, dreamt of becoming a police officer since she was little. However, she feared that the dream could not come true since, a few years earlier, she had decided to wear the *hijab*. The Norwegian Police University College’s admission office had earlier rejected such practice among its students. However, this request from the 23-year-old woman was directed to the Norwegian Directorate of Police, the first time the Directorate had received a letter on this matter. The question was now no longer a question of what to wear with the police uniform during education at the Police University College but a principal question applying to the police uniform as such. Therefore, the Directorate made inquiries into how regulations regarding wearing the *hijab* with police uniform were dealt with in other countries. In Sweden and the UK, the *hijab* is permitted but, in Denmark, such use is not permitted.



Seemingly, the Directorate of Police's written statement was not meant for publication. Nevertheless, after intense pressure from the Norwegian press, the newspaper, *Verdens gang* (VG), got to see – and on March 4 published – the written statement, dated January 29, 2009. Shortly after VG had published it, the statement was also published on the ministry's homepage. In the statement, the leader of the Directorate of Police, Ingelin Killengreen, concluded that the *hijab*, adjusted to match the police uniform, should be permitted.

*Politidirektoratet har vurdert de sikkerhetsmessige og praktiske sidene ved bruk av hijab eller annet religiøst hodeplagg som en del av politiuniformen, og kan ikke se at det ut fra slike vurderinger kan reises innvending mot dette. Det forutsettes imidlertid at hodeplaggene utformes som en del av uniformen og at det finnes praktiske løsninger som forhindrer at hodeplagget kan brukes til å skade tjenestemannen/kvinnen* (Directorate of Police, 2008).

The Directorate of Police has assessed the safety issues and practical aspects of the use of the hijab or other religious headscarf as part of the police uniform. No objection can be raised to this. It is assumed, however, that such a headscarf should be designed as an integrated part of the uniform and that there must be practical solutions to prevent the headscarf from being used to harm the officer (Directorate of Police, 2008, my translation)

Thus, the Directorate concluded:

*Politidirektoratet er ut fra en samlet vurdering av de hensyn som er nevnt foran, positiv til at det gis anledning til å benytte religiøst hodeplagg til politiuniformen. Vi mener at hensynet til å rekruttere bredt og sikre at politiet representerer alle samfunnslag uavhengig av livssyn og etnisitet, må komme foran et strengt krav til en nøytral politiuniform.*

Based on an overall assessment of the considerations mentioned above, the Directorate of Police is positive that wearing a religious headscarf with police uniform will be allowed. We believe that the need to recruit widely and ensure that the police represent every layer of society, regardless of religion and ethnicity, must come before the strict requirement of a neutral police uniform (Directorate of Police, 2008, my translation).

When the statement was published, the Director of Communication at the Ministry of Justice, Gunnar A. Johannessen, confirmed that "Police uniform regulations shall be amended so as to provide an opportunity for the use of religious headgear along with the police uniform" (Regjeringen.no, 2009a). The Directorate's acceptance of the use of the *hijab* with the police uniform of course caused a massive public debate. This debate brought to the surface negative attitudes towards accepting the *hijab* with the police uniform, seemingly among a majority of the Norwegian people. In addition,

the police organization, *Politiets fellesforbund*, reacted negatively to the Directorate's decision. In a statement to the newspaper, *Stavanger Aftenblad*, the leader of the police organization, Arne Johannessen, stated that "The police represent the state and no other. Until today, the police uniform was clean. Now that time is past"<sup>3</sup>.

The Directorate's statement ended with a clarification that it would be necessary to make adjustments to uniform regulations for the police. In Norway, such regulations are dealt with in the Cabinet and must be presented in parliament for approval and for the king to sanction. However, a proposal to change the uniform regulations never got this far. The Minister of Justice, representing the Labour party, Knut Storberget, apparently affected by the public debate and public opinion, in a press release on February 20, 2009 (Regjeringen.no, 2009b), stated:

*Det er avgjørende for tilliten til politiet at etaten speiler befolkningen. Vi har vurdert om en endring av politiets uniformsreglement ville bidra til økt rekruttering av folk med minoritetsbakgrunn. Jeg har nå landet på at dette ikke er et egnet virkemiddel og debatten har vist at en slik endring kan svekke opplevelsen av et nøytralt politi. Derfor har jeg bedt om at den videre prosessen i Politidirektoratet stoppes* (The Royal Ministry of Law and Police, 2009).

It is essential for confidence in the police department that it reflects the population. We have considered whether a change in police uniform regulations would contribute to increased recruitment of people from minority backgrounds. I have now come to the decision that this is not a suitable measure, and the debate has shown that such a change could undermine the experience of a neutral police force. Therefore, I have asked that the further process in the Directorate of Police be stopped (The Royal Ministry of Law and Police, 2009, my translation).

Minister Storberget's decision came after a period of heated public debate after the Directorate of Police was positive about changing uniform regulations. Politicians from both left and right disagreed with the Directorate; several public polls showed massive resistance to the *hijab* in the police, and Facebook groups against *hijab* in the police were established and had thousands of followers. In addition, the *hijab* was discussed in every debate program on different TV channels.

What was seemingly a small question addressed to the Directorate of Police by a potential police student developed in a few months to a massive public debate and obviously affected the political level. After the original positive response from the Directorate, the Department of Justice for a long time put a lid on the case. This of course led to conspiracy theories and speculations of disagreement within the government. However, when Minister Storberget sent out a press release on February 20, 2009, it was clear that the massive negativity regarding the *hijab* in the police that had surfaced in the public debate put the minister in a difficult situation. The Directorate of Police, which he was politically in charge of, had made a very

<sup>3</sup> [http://www.aftenbladet.no/innenriks/982903/-\\_Overraskende\\_og\\_meget\\_skuffende.html](http://www.aftenbladet.no/innenriks/982903/-_Overraskende_og_meget_skuffende.html) [accessed and downloaded November 18, 2010]. The link is currently dead.

unpopular decision. Even if the Directorate's justification was to recruit police officers from different minorities, to reflect the growing diversity in Norwegian society, it did not appeal to the Norwegian people, politicians or to the police. Therefore, Storberget's problem was whether to listen to the Directorate of Police or to the opinions presented in the public debate. He chose the latter. In the press release, he even used public opinion and related it to the public's confidence in the police. This confidence was related to a neutral police force with a neutral police uniform. A police uniform is, of course, in itself never neutral. One can, rather, consider it a symbol of the state, the executive power of the state.

*I perioden som har gått etter at det ble bedt om grundigere utredning i saken, er det blitt klarlagt at det er liten støtte i politietaten, befolkningen og i Stortinget for å foreta endring i politiets uniformsreglement.*

*En endring av uniformsreglementet, med en åpning for tildekking av hår, har aldri vært et mål i seg selv. Det har hele tiden vært tenkt som et mulig virkemiddel for å øke rekrutteringen til politiet fra minoritetsgrupper i samfunnet* (The Royal Ministry of Law and Police, 2009).

In the period that has elapsed since a more thorough investigation of the case was prompted, it has become clear that there is little support in the police, the population and in parliament to make changes to police uniform regulations. A change of uniform regulations, with the opportunity to cover the hair, has never been a goal in itself. It has always been thought of as a possible means to increase the recruitment of police officers from minority groups in society (The Royal Ministry of Law and Police, 2009, my translation).

An interpretation of Storberget's decision, as presented in the press release, is that an adjustment in the uniform regulations, which implies the covering of hair, is not an appropriate measure in terms of recruiting police officers with immigrant backgrounds. Whether this was Storberget's point of view all along, or if his decision was a result of public opinion, is difficult to tell. Nonetheless, this case clearly showed that neither the public nor the government was ready to allow the *hijab* – a symbol of Islam, which, in the last decade, has been widely disputed and debated in Europe – in the Norwegian police force.

In an official report (NOU, 2013:1), a group appointed by the government referred to the debate in 2008 and 2009 and recommended that the *hijab* should be allowed in the police. However, the suggestion did not result in any changes.

## Case 2: *Hijab* in Schools

About a year after the heated public debate on the *hijab* in the police, and in the wake of it, a public debate regarding whether schools had the opportunity to ban headscarves in their house rules, the Royal Ministry of Education asked the Justice Department for an assessment of current law.

Hence, the Minister of Education, Kristin Halvorsen, representing the Socialist Left Party (abbreviated SV in Norwegian), in a letter dated February 26, 2010, asked the Law Division of the Ministry of Justice to evaluate the following question:

*Er religionsfriheten, jf. Grunnloven § 2, EMK artikkel 9, Barnekonvensjonen artikkel 14 og Den internasjonale konvensjon om sivile og politiske rettigheter artikkel 18, til hinder for å innta et forbud i ordensreglementet mot bruk av hijab?* (The Royal Ministry of Law and Police, Law Division, 2010).

Is the freedom of religion, cf. Constitution § 2, ECHR Article 9, Article 14 of the CRC and the International Covenant on Civil and Political Rights, Article 18, an obstacle to adopting a prohibition in the order of rules on the use of the hijab? (The Royal Ministry of Law and Police, Law Division, 2010, my translation).

In addition, the Ministry of Education requested an answer to the questions regarding whether the Education Act § 2–9 and 3–7, respectively, may provide municipalities and counties with sufficient authority to establish such a ban in schools' rules and regulations.

In a 16-page-long letter, dated March 19, 2010, the Law Division of the Ministry outlined their interpretation of national and international laws at stake in relation to prohibiting Muslim students from wearing the *hijab* in schools. The conclusion was that such a prohibition could not be effectuated in Norwegian schools (The Royal Ministry of Law and Police, Law Division, 2010). In the letter, the Law Division put special emphasis on the Norwegian constitution and paragraphs ensuring freedom of religion. The Law Division's assessment, however, referred to the fact that the European Court of Human Rights (ECHR) had, in some cases, accepted the ban on headscarves in some countries. These decisions, however, must be contextualized to each country's constitution, i.e. France and Turkey, where there is a fundamental distinction between state and religion. This does not exist in the Norwegian case, in reference to the position the Evangelical-Lutheran religion had before 2012 (and to some extent after). The Law Division's conclusion was that, in order to be in accordance with international conventions, such as the European Convention on Human Rights (ECHR), the Committee on the Rights of the Child (CRC), and the International Covenant on Civil and Political Rights, Norway could not prohibit the use of the *hijab* in schools. Nonetheless, The Law Division also commented that the legal situation regarding this issue was unclear. Still, the conclusion was that it would not be enough to make changes in the Education Act to prohibit the *hijab*:

*Når det gjelder spørsmålet om hjemmel for et eventuelt hijabforbud, tilsier både følgene for elevene som rammes av forbudet og det faktum at et forbud reiser spørsmål i forhold til både Grunnloven og menneskerettskonvensjonene, at et generelt forbud mot bruk av hijab krever hjemmel i lov. Vi antar videre at dagens hjemler i opplæringsloven neppe gir grunnlag for et generelt*

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*forbud mot hijab i skolen. Et eventuelt forbud vil også måtte vurderes opp mot lovskravet i EMK* (The Royal Ministry of Law and Police, Law Division, 2010, p. 16).

The question of the authorization for any hijab ban suggests both the consequences for students who are affected by the ban and the fact that a ban raises questions in relation to both the Constitution and human rights conventions that a general prohibition on the use of hijab requires statutory authorization. Furthermore, we assume that the current legal basis in the Education Act hardly provides a basis for a general ban on headscarves in schools. Any ban would also have to be weighed against the requirements of ECHR law (The Royal Ministry of Law and Police, Law Division, 2010, p. 16, my translation).

In a press release on March 22, 2010, Minister of Education Halvorsen stated that this meant that the government would not take any further measures to prohibit the *hijab* in Norwegian schools:

*Jeg mener lovavdelingens vurdering viser at et forbud kun mot hijab vil være diskriminerende og dermed i strid med menneskerettighetene. Vurderingen viser også at opplæringsloven neppe gir hjemmel for et generelt forbud mot hijab, og loven gir heller ikke hjemmel for et generelt forbud mot alle religiøse plagg. Det er ikke aktuelt for regjeringen å foreslå endringer som kan åpne for slike forbud* (The Royal Ministry of Education and Research, 2010).

In my view, the review by the Ministry of Justice shows that a ban only on the hijab would be discriminatory and thus in violation of human rights. The assessment also shows that the Education Act hardly provides grounds for a general ban on the hijab, and the law provides no legal basis for a general ban on all religious garments. It is not appropriate for the government to propose amendments that could open the way for such a ban (The Royal Ministry of Education and Research, 2010, my translation).

The minister also explained that it was important to get an evaluation of these matters, in case any proposals to change the legislation should appear. At that time, Norway had experienced an extensive debate on the *hijab* in the wake of the police uniform question. However, an internal debate in the Socialist Left Party and Minister Halvorsen's statements in the newspaper, *Dagbladet*, triggered that debate. On March 2, Minister Halvorsen wrote:

*I tråd med sentrale, liberale frihetsverdier mener jeg derfor både at jeg har rett og plikt til å si ifra at det ikke er ønskelig at småjenter går med hijab. Hva unge og voksne kvinner selv velger å gjøre ut fra sin tro er selvsagt en helt annen sak* (Halvorsen, 2010).

In accordance with central, liberal values of freedom, I mean that I have both the right and the duty to say that it is not desirable that little girls wear the hijab. What young and adult women themselves choose to do, based on their faith, is, of course, a completely different matter (Halvorsen, 2010).

Several other politicians also made similar statements and openly stated that they would consider suggesting a prohibition of the *hijab* in schools. In March, when the statement from the Department of Justice was presented, the debate on a possible prohibition of the *hijab* in schools was not completely silenced. The public debate on Islam continued in relation to a proposition in the Norwegian parliament to prohibit the *niqab* and *burqa* in public places, described in Case 3 below.

However, the discussion concerning banning the *hijab* in schools was not over. In December 2010, representatives from the political party *Fremskrittspartiet* – a right-wing party known for their restrictive policies regarding immigrants and Islam – presented a proposal to ban the *hijab* in primary schools (Stortinget, 2010–2011a). The proposal was dealt with in the Committee for Church, Education and Research (Stortinget, 2010–2011b). The discussion referred to the decision the year before and came to the same conclusion: A law against the *hijab* would be in conflict with the Norwegian state's commitments to basic human rights.

### Case 3: *Niqab* and *Burqa* in Public Places

On March 3, 2010, representatives, Siv Jensen and Per Willy Amundsen, also from the political party *Fremskrittspartiet*, sent a proposition to the Norwegian parliament, in which they proposed prohibiting garments covering the face in public places. In the proposal to the parliament (Stortinget, 2009–2010a), it is made clear that the *niqab* and *burqa* are the core issue. In their background comments, Amundsen and Jensen write that the *niqab* and *burqa* might be considered suppressive towards women. In addition, they emphasize that such clothing makes identification difficult and represents a hindrance when it comes to integration. In the proposition, parallels are drawn to similar proposals in several European countries, such as Belgium, the Netherlands, Denmark, and France.

After a debate in parliament, a majority supported the proposition. Thus, the formal document referring to the debate (Stortinget, 2009–2010b, p. 3) reads:

*Stortinget ber regjeringen legge frem nødvendige lovforslag for å nekte å yte offentlige tjenester til personer som opptrer i heldekkende plagg.*

*Stortinget ber regjeringen legge frem nødvendige lovforslag for å forby bruk av heldekkende plagg på offentlig sted.*

Parliament requests the government to present the necessary bill to refuse to provide public services to persons acting in full-covering garments (my translation).

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Parliament requests the government to present the necessary bill to ban the use of full-covering garments in public places (my translation).

The Committee of Justice in parliament dealt with the proposition (Stortinget, 2009–2010b) in May 2010, and the majority voted against it. As part of the discussions, the committee had asked Minister of Justice Knut Storberget for a statement from the ministry, regarding the proposition. The minister's written statement, dated April 21, 2010 (and also published in full on the ministry's website), concluded with a recommendation not to accept the proposition. The minister emphasized that "there is great danger that the general ban on wearing full-covering garments in public places will be in breach of ECHR Article 9" (Stortinget, 2009–2010b, p. 7, my translation). ECHR Article 9 addresses the freedom of religion and belief in particular, and it forms the main reason for the minister's recommendation to abandon the proposition. However, the minister ends his statement with a quite interesting remark:

*Bruk av heldekkende plagg som burka og niqab synes å berøre et begrenset antall kvinner i Norge i dag. Jeg er enig i at denne type plagg gir uttrykk for et menneske- og kvinnesyn som bør motarbeides, men det er grunn til å spørre om dette gjøres best og mest effektivt gjennom andre virkemidler enn et generelt forbud mot bruk av heldekkende plagg i det offentlige rom (Stortinget, 2009–2010b, p. 7).*

The use of full-body garments, such as the *burqa* and *niqab*, seems to apply to a limited number of women in Norway today. I agree that this type of clothing provides a view of men and of women that should be opposed, but there is reason to question whether this is done best and most effectively through other means than a general prohibition against the use of full-body garments in public places (Stortinget, 2009–2010b, p. 7, my translation).

To some extent, Minister Storberget clearly expresses agreement with Amundsen and Jensen. He finds that the *niqab* and *burqa* should be opposed in Norwegian society but not by making it illegal to wear them. In addition, the minister regards Norway as committed to international conventions, which are ratified and implemented in Norwegian law. A general ban might conflict with the Norwegian state's commitment to human rights concerning freedom of religion. Hence, the Committee of Justice in parliament stopped the proposal.

#### Case 4: *Niqab* and *Burqa* at Universities

In February 2012, a professor at the UiT – The Arctic University of Norway reached national headlines when he refused to lecture, while a student<sup>4</sup> wearing *niqab* was attending (Ostring, 2012). The professor said that he used his right as a lecturer to reject this student's attendance. According to him, this was a matter of principle, and he compared the *niqab* with other clothing that covers a person's face. The professor

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<sup>4</sup> The student was a woman of Norwegian origin and a convert to Islam.

referred to the possibility of making regulations locally concerning clothing, which applied to schools, universities and university colleges. The professor's decision created another public debate concerning the clothing of Muslims, this time with reference to the *niqab* and *burqa*, garments understood as more radical than the *hijab*. The debate also showed that the possibility of making local regulations was interpreted and practised rather differently in schools and universities.

In 2016, three representatives from the Labour party sent a proposal to parliament, suggesting "national regulations that ensure that pupils', students' and teachers' faces should be fully visible in schools, universities and university colleges" (Stortinget, 2016–2017, my translation). The argument was the importance of good communication in teaching processes and the need for national regulations concerning this. Neither the *niqab* nor *burqa* was mentioned in the proposal. In parliament's treatment of the suggestion, it was made clear that this would especially affect garments like the *niqab* and *burqa* (Stortinget, 2017–2018, p. 12). The majority of political parties and representatives agreed with the suggestion. The result was a national regulation of clothing at all levels in the Norwegian education system, from kindergarten to primary, secondary and upper-secondary schools, university colleges and universities, and even private schools<sup>5</sup>. With effect from 2018, this applies to children in kindergartens, pupils in schools, students in university colleges and universities, as well as teachers.

In the background document, the Law Division of the Ministry of Justice assessed the question of whether this suggestion could be a violation of human rights. The proposition emphasizes that a teaching situation is a context that makes such a ban possible:

*Lovavdelinga meinte at forbod som er grunnlagt i eit sakleg formål, som er nødvendig, og som ikkje er uforholdsmessig inngripande, ikkje vil vere i strid med trus- og livssynsfridommen eller diskrimineringslovverket. Lovavdelinga slo fast at praktiske utfordringar med kommunikasjonen i undervisningssituasjonen og det sosiale samværet mellom elevane, kan gjere at eit forbod mot bruk av ansiktsdekkjande plagg, som er nøytralt utforma, ikkje er i strid med menneskerettane.* (Stortinget, 2017–2018, p. 17)

The Law Division argued that prohibitions that are based on a factual purpose, which are necessary, and which do not disproportionately interfere, will not be contrary to the freedom of religion or the discrimination laws. The Law Division stated that practical challenges with communication in the teaching situation and the social interaction between pupils may mean that a ban on the use of face-covering garments, which are neutrally designed, does not violate human rights. (Stortinget, 2017–2018, p. 17, my translation)

Thus, the arguments that paved the way for a ban on face-covering garments was the importance of communication in teaching situations. Since this is a matter of

<sup>5</sup> In the Education Act for primary, secondary and upper-secondary school, the paragraph was § 9–7 (Law on Primary and Secondary Education, 1998).



principle, and the law does not mention any specific garments, it can be accepted or interpreted as a regulation that does not discriminate against individuals belonging to religious groups. However, it is worth noticing that, in this case and this line of argument, the *niqab* and *burqa* are considered to be “neutrally designed”. This is clearly a new way of talking about the *niqab* and *burqa* in the Norwegian political discourse.

### The Final Solution – Making Muslim Clothing Secular

In the years between 2008 and 2011, there were several political and public debates about Muslims and clothing. While the Directorate for Police was initially positive about allowing the *hijab* in the police (Case 1), although it was understood as a “religious headscarf”, the public and political debate rejected the idea. In the year after, when the suggestions of a ban against the *hijab*, *niqab*, and *burqa* in public places and in schools were discussed (Case 2 and 3), they were refused with reference to the Norwegian state’s commitments concerning basic human rights. The final solution, to ban Muslim garments, was in the educational sector (Case 4), with reference to the importance of communication.

The political debates and the different propositions seem to have been aimed at curtailing Muslim women’s rights to wear the *niqab* or *burqa*. Analysing the political debates and propositions, it is obvious that Norway’s obligation to international conventions has functioned as a prevention to toughening existing laws. It is obvious to argue that politicians seem to have learned from these processes, and “finally” found a way around the human rights obligations: to define Muslim garments, such as the *niqab* and *burqa*, as “neutrally designed” and to use secular arguments (the importance of communication in teaching processes). This way, it is not related to freedom of religion, and the Norwegian state’s commitment to human rights is not challenged. It is about ensuring good conditions for teaching and learning.

In many ways, all four cases might be interpreted as an attempt to force the use of religious symbols in the public sphere back to the private sphere. All four cases, in some way or another, illustrate the political reluctance to allowing the *hijab*, *burqa*, and *niqab* in public places. Wearing those kinds of garments is associated with religious radicalism, which is not appreciated in Norwegian society, and often addressed in public and political debates.

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